



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MAP/160394

PRELIMINARY RECITALS

Pursuant to a petition filed September 05, 2014, under Wis. Stat. §49.45(5), and Wis. Admin. Code §HA 3.03, to review a decision by the Winnebago County Department of Human Services in regard to Medical Assistance (MA), a telephonic hearing was held on October 07, 2014.

The issue for determination is whether the agency met its burden to show that it correctly determined the petitioner's Medicaid Purchase Plan premium.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

I

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Leslie Vosters, Fair Hearing Coordinator
Winnebago County Department of Human Services
220 Washington Ave.
PO Box 2187
Oshkosh, WI 54903-2187

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Winnebago County.
2. The petitioner is eligible for MA under the Medicaid Purchase Plan.

3. The petitioner's income is \$50 per month for in-kind services, \$1,166 per month in social security and \$296.08 in monthly pension.
4. The county agency determined that the petitioner must pay a \$625 monthly premium to receive benefits under the Medicaid Purchase Plan effective September 1, 2014. See Exhibit A.
5. For a one-person household, 150% of the federal poverty level is \$1,458.75; 250% of that level is \$2,431.25. *Medicaid Eligibility Handbook*, §39.5.

DISCUSSION

The petitioner is eligible to receive benefits under the Medicaid Purchase Plan (MAPP), which allows disabled persons to work and receive medical assistance if their income falls below 250% of the federal poverty level after excluding those amounts found in 42 USC 1382a (b). Wis. Stat. §49.472(3)(a). Those whose income exceeds 150% of the federal poverty level, whether earned or unearned, must pay a premium. Wis. Stat. §49.472(4)(b). That premium is 3½% of all earned income, but 100% of unearned income remaining after deducting \$20 plus an amount equal to state and federal SSI payments, which is currently \$824. Wis. Stat. §49.472(4)(a)1; *Medicaid Eligibility Handbook*, §39.4.2. This combined deduction is known as the standard living allowance.

The federal poverty level is determined by the number of persons in the recipient's fiscal test group. Wis. Adm. Code, §DHS 103.04(9). The petitioner lives alone, so there is one person in her fiscal test group. For a one-person household, 150% of the federal poverty level (FPL) is \$1,458.75 and 250% of that level is \$2,431.25. *Medicaid Eligibility Handbook*, §39.5.

When determining whether the recipient's income exceeds 250% of the federal poverty level, agencies must allow a number of deductions. See *Medicaid Eligibility Handbook*, §26.5. Because the petitioner's income is below 250% of the federal poverty level even without these deductions, there is no need to review them. However, because her income puts her above the 150% FPL, she must pay a premium.

The workers are instructed to determine the premium in the following manner:

1. From gross monthly unearned income, subtract the following:
 - a. Special Exempt Income (15.7.2 Special Exempt Income).
 - b. Standard Living Allowance (39.4.2 EBD Deductions and Allowances).
 - c. Impairment Related Work Expenses (IRWE). For MAPP , use only anticipated incurred expenses, past medical expenses are not allowed. (15.7.4 Impairment Related Work Expenses (IRWE)).
 - d. Medical Remedial Expenses (MRE). For MAPP, use only anticipated incurred expenses, past medical expenses are not allowed. (15.7.3 Medical/Remedial Expenses (MRE))
 - e. Current COLA from January 1st through the date the FPL is effective in CARES for that year. 503, DAC, widow/widower disregards allowed in eligibility determinations can not be allowed in premium calculations.

The balance is the Adjusted Countable Unearned Income. This number may be a negative number.

2. From gross monthly earned income, subtract any remaining deductions from #1. If the result from #1 is a negative amount, change it to a positive number. The balance is the Adjusted Earned Income.
3. Multiply the adjusted earned income by three percent (.03).
4. Add the results of #3 and #1 together.
5. Compare the result from #4 to the Premium Schedule (39.10 MAPP Premiums) to determine monthly premium amount.

Medicaid Eligibility Handbook, §26.5.

It appears that the agency has correctly followed policy on determining whether or not petitioner owes a premium. The petitioner did not dispute the calculations or the deductions given. The only deduction she is eligible for is the standard living allowance. The COLA disregard is only deducted on cases between January 1st and February 28th because the FPL's were updated in CARES effective March 1st. This premium was for September of 2014 so no COLA disregard is used on her case in order to determine her MAPP premium. Accordingly, I must find that the agency has met its burden.

I add for petitioner's information that I am not able to change the premium policy or its effect on MAP members based on a fairness argument. It is the long-standing position of the Division of Hearings & Appeals that the Division's hearing examiners lack the authority to render a decision on equitable arguments. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions. The petitioner is free to request other MA programs and/or apply to the federal marketplace within the open enrollment period.

CONCLUSIONS OF LAW

The agency has met its burden to show that it correctly determined the petitioner's Medicaid Purchase Plan premium of \$625.

THEREFORE, it is

ORDERED

The petition for review herein is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

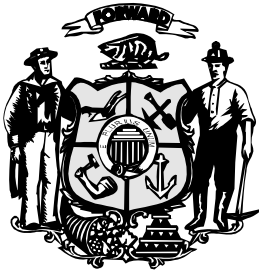
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 19th day of November, 2014

\sKelly Cochrane
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on November 19, 2014.

Winnebago County Department of Human Services
Division of Health Care Access and Accountability